



# DEPARTMENT OF THE TREASURY

## INTERNAL REVENUE SERVICE

1100 Commerce Street  
Dallas, TX 75242

501-03.00

**TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION**

**Date:** May 22, 2013

Release Number: 201335016

Release Date: 8/30/2013

**LEGEND**

ORG - Organization name

XX - Date Address - address

**Person to Contact:**

**Badge Number:**

**Contact Telephone Number:**

**Contact Address:**

**Employer Identification Number:**

**CERTIFIED MAIL**

Dear \_\_\_\_\_ :

This is a final notice of adverse determination that your exempt status under section 501(c)(3) of the Internal Revenue Code is revoked. Recognition of your exemption under Internal Revenue Code section 501(c)(3) is revoked effective January 1, 20XX for the following reason(s):

You are not operated exclusively for an exempt purpose as required by Internal Revenue Code section 501(c)(3). You are not and have not been engaged primarily in activities which accomplish one or more exempt purposes. You are not a charitable organization within the meaning of Treasury Regulation 1.501(c)(3)-1(d); rather, your activities further a substantial nonexempt commercial purpose and serve private rather than public interests.

Because you did not protest the proposed modification of your non-private foundation status and have indicated your agreement by signing the Form 6018 on March 5, 20XX, it is further determined that you have not exhausted your available remedies for purposes of declaratory judgment under section 7428 of the Code.

Contributions to your organization are no longer deductible.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending December 31, 20XX and for all the tax years thereafter in accordance with instructions of the return.

It is further determined that your failure to file a written appeal constitutes a failure to exhaust your available administrative remedies. However, if you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia before the (ninety-first) 91st day after the date that this determination was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment.

To secure a petition form, write to the following address: United States Tax Court, 400 Second Street, NW, Washington, DC 20217.

Please understand that filing a petition for a declaratory judgment under IRC section 7428 will not delay the processing of subsequent income tax returns and assessment of any taxes due.

You also have the right to contact the Office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access you tax information and can help you get answers. You can call 1-877-777-4778, and ask for the Taxpayer Advocate assistance or you can contact the Advocate from the site where this issue was determined by writing to:

Taxpayer Advocate assistance cannot be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determination, nor extend the time fixed by law that you have to file a petition in Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

This letter should be kept within your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely,

Nanette M. Downing  
Director, EO Examinations

Enclosures:  
Publication 892

**Internal Revenue Service  
Department of the Treasury  
Tax Exempt and Government Entities Division  
Exempt Organizations: Examinations  
1100 Commerce Street  
Dallas, Texas 75242**

Date: February 13, 2013

Taxpayer Identification Number:  
Form:  
Tax Year(s) Ended:  
Person to Contact/ID Number:  
Contact Numbers:  
Telephone:  
Fax:

ORG  
ADDRESS

Ref: ORG

**Certified Mail – Return Receipt Requested**

Dear :

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for

the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing  
Director, EO Examinations

Enclosures:  
Publication 892  
Publication 3498  
Form 4621  
Report of Examination

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended December 31, 20XX

**LEGEND**

ORG - Organization name      XX - Date      EIN - ein      State - state  
 Founder - founder      website - website      CO-1 & CO-2

**Issue:**

Whether the ORG continues to qualify for exemption under Section 501(c)(3) of the Internal Revenue Code.

**Facts:**

The organization was formed in September 20XX when Articles of Incorporation (for Domestic Non-Profit Corporations) were filed with the State of State. The purpose of the organization as stated in the Articles is as follows: "To provide and distribute food, meals, nutritional drinks, nutritional puddings and health and wellness products and services to the hungry, poor and less fortunate."

The organization received its tax-exempt status effective 9/21/20XX under 501(c)(3), as a 509(a)(1) & 170(b)(1)(A)(vi) public charity. Founder is the founder and listed as the sole officer of the organization. The organization has no employees.

The organization filed their 20XX Form 990-N postcard on 5/15/20XX. The organization has not filed any other returns since its establishment.

The organization maintains a website at website (website and website are also web addresses to the same website). The main title on the webpage is ORG, a related for-profit company. The entire website is directed toward the non-profit organization, with mention of having a "for-profit division" that covers all of the "administrative costs of the non-profit" so that "% of all donations received will go directly to meals, food and delivery costs". The website solicits charitable donations from the public to "put an end to hunger on the entire planet". The organization accepts donations via "automatic monthly tithing", as well cash, check or equivalent, credit card, or other assets (such as real estate). The website states that the organization provides the hungry with "nutrient dense foods" from "independent nutrient dense food and nutrition providers". Further research completed by the Revenue Agent shows that these "independent providers" are related entities of the ORG. The nutrient dense food is the same product that the related entities market as a "diet product".

The initial examination appointment was conducted with the Power of Attorney (POA). Very little documentation was available and the POA indicated that the organization has never been operational. It was stated that the organization had no bank accounts or any other assets. When asked about the relationship of the

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501(c)(3) and the LLC which have the same name and share the same website, the POA stated that he believed that they were the same entity, and was unaware of why there were two separate entities established.

During the initial meeting, the POA had 13 original checks totaling \$ that were received by the organization from CO-1 between May 20XX and February 20XX as charitable donations for general support. The organization also received 1 check from CO-2, totaling \$ issued on 9/15/XX. These 14 checks were never deposited or cashed and are now void based on the time passed since issued. These 14 checks were presented as the only income ever received by ORG. ORG had contracted with CO-2 (aka CO-1), an organization that provides assistance to charities with fundraising via a Donate Now service through the internet, for a monthly fee. In January 20XX, ORG cancelled its account with CO-2, requesting that its credit card no longer be billed for the service.

A questionnaire was provided to the organization's founder and president to address examination questions that were unable to be answered by the POA. Founder provided written responses that confirmed ORG had never been operational and that the organization did not have any assets or bank accounts. The responses to the questionnaire stated that ORG has not conducted any activities relating to its exempt purpose, is not soliciting contributions, and is not receiving contributions. In response to a question regarding the relationship between the organization and the LLC, since they are portrayed as the same entity via the website, Founder stated that neither entity is operational, and that the LLC was going to be used to supply food for the foundation.

#### **Law:**

Section 1.501(c)(3)-1(a)(1) of the Federal Tax Regulations (regulations) provides that in order to be exempt as an organization described in section 501(c)(3) of the Internal Revenue Code, (IRC) the organization must be one that is both organized and operated exclusively for one or more purposes specified in that section. If an organization fails to meet either the organizational or operational test, it does not meet the requirements for tax exemption.

Section 1.501(c)(3)-1(c) of the regulations specifies that with regard to the primary activities within the operational test, an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in IRC Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an

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insubstantial part of its activities is not in furtherance of exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Treasury Regulation § 1.6001-1(e) states that the books and records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any Internal Revenue law.

Section 1.6001-1(c) of the regulations requires that an exempt organization must maintain records sufficient to demonstrate that it is entitled to tax exempt status.

IRC § 6033(a)(1) provides, except as provided in IRC § 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Regulation § 1.6033-1(h)(2) provides that every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the Director, for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Internal Revenue Code and IRC § 6033.

Section 1.6033-2(h)(2) of the regulations holds that an organization which is exempt from tax, whether or not it is required to file an annual information return, shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status.

Revenue Ruling 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of IRC § 6033 and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that

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the organization has not established that it is observing the conditions required for the continuation of exempt status.

**Taxpayer Position:**

The Organization has signed and returned form 6018, Consent to Proposed Action – Section 7428, which signifies their agreement to the proposed revocation.

**Government Position:**

The Organization does not pass the operational test as specified in section 1.501(c)(3)-1(c) of the regulations because the lack of activities is evidence that they were not operated exclusively for one or more charitable purposes. To be considered as operating exclusively for charitable purposes, the Organization would have had to engage primarily in activities which accomplish one or more of such exempt purposes as specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

In addition to the lack of any charitable activity is the lack of any qualified activity at all. The Organization has not provided evidence of conducting meetings or events, creating and/or issuing reports, creation or distribution of publications, or conducting any other activity in furtherance of its exempt purpose. The only indication of any activity is the Organization's website which solicits contributions from the general public. Further, the organization received contributions that were never deposited or cashed, therefore the contribution checks received became void and the organization forfeited the donated funds.

The organization was established with the same name as a related for-profit entity, about two months after the related for-profit was established. The exempt organization shares a website with the related entity, which portrays the two entities as one and the same. Since no exempt activities have been conducted, including failing to deposit donations received, it is clear that the charitable organization was established as a shell and the 501(c)(3) status is being exploited by the related for-profit as a scheme to obtain funds for the for-profit while providing a charitable tax deduction for those purchasing the products of the related for-profit entity.

In accordance with the above cited provisions of the Code and regulations under IRC §§ 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information return (and other required



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Federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax.

The organization has clearly failed to conduct any exempt activities since it was established. The organization has no assets, does not maintain a bank account, and has not provided any indications that it plans to conduct exempt activities in the future. Additionally, the organization has failed to meet the reporting requirements under IRC §§ 6001 and 6033 to be recognized as exempt from federal income tax under IRC § 501(c)(3). Accordingly, it is the Government's position that the organization's exempt status should be revoked back to inception on September 21, 20XX.

### **Conclusion:**

The organization received exemption under Section 501(c)(3) of the Internal Revenue Code after providing information about their intended activities as described in their Articles of Incorporation, however they have not provided documents or information to substantiate that they participate in any charitable activities according to those outlined in their initial application or those stated under Internal Revenue Code Section 501(c)(3).

It is the Internal Revenue Service's position that the organization failed to meet the organizational and operational requirements. The organizational test concerns the organization's articles of organization or comparable governing document. The operational test concerns the organization's activities. A deficiency in an organization's governing document cannot be cured by the organization's actual operations. Likewise, an organization whose activities are not within the statute will not qualify for exemption by virtue of a well written charter.

The IRC section 501(c)(3) tax exempt status of ORG should be revoked, effective September 21, 20XX, because it is not operated exclusively for tax exempt purposes pursuant to the requirements set forth in section 1.501(c)(3)-1(c)(1) of the regulations.

If applicable, Form 1120 returns should be filed for the tax periods ending on or after December 31, 20XX.